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Dalzell, John

Customs duties for
Puerto Rico

Washington

1900

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Richard Henry Davis
CUSTOMS DUTIES FOR PUERTO RICO.

—
S P E E C H

OF

HON. JOHN DALZELL,
OF PENNSYLVANIA,

IN THE

HOUSE OF REPRESENTATIVES,

MONDAY, FEBRUARY 19, 1900.

— ♦ —
WASHINGTON.

1900.

SPEECH
OF
HON. JOHN DALZELL.

The House being in Committee of the Whole House on the state of the Union, and having under consideration the bill (H. R. 823) to regulate the trade of Puerto Rico, and for other purposes—

Mr. DALZELL said:

Mr. CHAIRMAN: By virtue of a treaty with Spain the islands constituting the Philippine Archipelago and the island of Puerto Rico became territory belonging to the United States. That treaty was made in the usual way, was ratified by the Senate, and is an accomplished fact. Whatever we may think as to its wisdom matters not now. Even if we were disposed to recede from its obligations, the time for so doing has long since gone by. The fact that stares us in the face is that by virtue of that treaty we have assumed certain responsibilities, certain relations with the inhabitants of those islands, certain relations with the nations of the world, and certain duties to ourselves from which there is no escape. Whatever may be our ultimate purpose, we can now do nothing but provide for these acquisitions in such way as shall best contribute to their welfare and our own.

Puerto Rico is a little island about 95 miles long and 45 miles wide, situated in the Caribbean Sea. It is the most densely populated piece of territory in the world. Only about 13 per cent of its population are capable of reading and writing. The people are such as you might expect to find after a domination of three or four hundred years by Spain. The Philippine islands are distant from us in the neighborhood of 8,000 miles. They differ from Puerto Rico in extent of territory, in number and character of inhabitants, in civilization, in the products of their soil. They differ largely in many respects from each other.

I read from the report of the Philippine Commission:

The total number of inhabitants has been estimated at all the way from 6,000,000 to 12,000,000.

The inhabitants of the Philippines belong to three sharply distinct races—the Negrito race, the Indonesian race, and the Malay race. It is universally conceded that the Negritos of to-day are the disappearing remnants of a people which once populated the entire archipelago. They are physically weaklings of low stature, with black skin, closely curling hair, flat noses, thick lips, and large, clumsy feet. In the matter of intelligence they stand at or near the bottom of the human series, and they are believed to be incapable of any considerable degree of civilization or advancement.

Centuries ago they were driven from the coast regions into the interior portions of the islands by Malay invaders, and from that day to this they have steadily lost ground in the struggle for existence until but a few they are to be met with only on the forest-clad sides of the higher mountains. Luzon, Panay, Negros, and Mindanao, although in the northeastern part of Luzon they are said to still inhabit the wooded lowlands near the coast. They lead a nomadic life, wandering almost naked through the forests and living on fruits, tubers, and such game as they can bring down with their bows and poisoned arrows. It is believed that not more than 25,000 of them exist in the entire archipelago, and the race seems doomed to early extinction.

Within a comparatively short time it has completely disappeared from several of the islands which it formerly inhabited, and it is said that the birth rate is now considerably below the death rate.

So far as is at present known, the Philippine tribes belonging to the In-

donesian race are confined to the great island of Mindanao, the surface of which constitutes about one-third of the total land area of the archipelago. It is possible that a more careful study of the wild peoples of North Luzon will show that here also there exist Indonesian tribes, or tribes showing evidence of Indonesian origin; but this is a question which remains to be determined.

The Philippine representatives of this race are physically superior not only to the Negritos, but to the more numerous Malay peoples as well. They are tall and well developed, with high foreheads, aquiline noses, wavy hair, and often with abundant beards. The color of their skins is quite light, and many of them are very clever and intelligent. None of the tribes have been Christianized. Some of them have grown extremely fierce and warlike as a result of their long struggle with hostile Malay peoples. Others, more happy in their surroundings, are pacific and industrious.

The great majority of the inhabitants of the Philippines are of Malay extraction, although the race is not found pure in any of the islands, but is everywhere more or less modified through intermarriage with Chinese, Indonesians, Negritos, Arabs, and, to a limited extent, Spaniards and other Europeans.

The individuals belonging to these Malay tribes are of medium size, with straight black hair. As a rule, the men are beardless, and when they have a beard it is usually straggling and appears late in life. The skin is brown and distinctly darker than that of the Indonesians, although very much lighter than that of the Negritos. The nose is short and frequently considerably flattened.

The representatives of these three races are divided into numerous tribes, which often differ very greatly in language, manners, customs, and laws, as well as in degree of civilization. In numerical importance they range from the Visayans, numbering more than 2,000,000, to the Calanganes, of whom but a bare 300 remain. The greater part of the tribes are wild and pagan, but the civilized and Christianized peoples, although few in number, include the majority of the inhabitants.

That the Filipinos do not constitute "a nation" or "a people" will appear from the perusal of the following table, which gives the names of the various tribes so far as known, the regions which they respectively inhabit, and where practicable, an estimate of the number of individuals composing each.

Then follows a statement showing that there are 84 different tribes, differing in language, differing in customs, and differing in civilization.

Now, then, these people beyond all recall have fallen to our care. We are to give them peace and order, education, civilization, and possibly independence; but the immediate necessity of the hour is that we govern them. If there is anything in the world clear it is that these eighty-four tribes require different modes of government, different kinds of laws, different treatment adapted to their respective needs. And yet, attempting now for the first time to legislate for one of our new possessions, we are met with the proposition that all of our new possessions must be governed by one fixed, unvarying system, and that the system which applies to ourselves, the freest and most intelligent people on the face of the earth.

An amazing proposition, involving free trade with the Philippines, the extension to them of our navigation laws, and the incorporation into the body politic of from six to twelve millions of semisavages. How do you like the problem? Do you believe that you can carry civilization and ultimately independence to those people if your hands are tied by the limitations of the Constitution of the United States?

But are our hands so tied? By no means. My proposition is that the government of territory belonging to the United States is not subject to the limitations of the Constitution, but that Congress has power, absolute power, to govern, keeping only in mind those fundamental principles which, though they may be written in the Constitution, are not binding on us in this regard because they are so written, but because they are a part of our system of government.

Now, under the treaty the political status of the inhabitants of those islands is to be fixed by the Congress of the United States. Under a provision in the Constitution Congress has power to dispose of and make all needful rules and regulations respecting territory belonging to the United States. It would seem, therefore, that the power to pass this bill providing for customs duties in Puerto Rico and in the United States is unquestionably in Congress. But it is said that there exists a limitation upon that power; that the limitation arises out of that provision of the Constitution which says that—

All duties, imposts, and excises shall be uniform throughout the United States.

Does the term "United States" include Puerto Rico as the framers of that instrument intended when they used that language? The first place that we ought to go for an answer to that question is to the Constitution itself. We ought to be able to ascertain from the language used what was the intention of the framers of that great instrument at the time when it was made. The term "United States" is used to express several different things. The United States, for instance, means the forty-five States that collectively constitute the Federal Union. "The United States" is used as a term of geographical description, just as we use "the British Empire" to cover all Great Britain's possessions.

But "the United States" is used in a political sense in the Constitution to indicate that corporation which is the result of the union of the original thirteen States, and it seems to me that a study of the language of the Constitution can not but lead any impartial seeker after the truth to come to the conclusion that the words "United States" as used therein have reference only, excepting where otherwise pointed out, to the thirteen original States and to those that under provision made should subsequently become a part of the Union.

Mr. HENRY of Texas. Will the gentleman allow me an interruption?

Mr. DALZELL. Without wishing to be uncivil, I ask as a favor that I be not interrupted.

Certainly no one would say from reading the preamble to the Constitution that anything but the thirteen States were referred to therein. "We, the people of the United States" could only mean the people of States that adopted the instrument. The people of the United States in framing that Constitution were engaged in setting up a working government, consisting of three separate departments—the legislative, the executive, and the judicial. Take the articles in the Constitution that relate to these three separate departments of the Government, and you must come to the conclusion that "the United States" means only those who participated in the making of that Constitution.

The legislative department is to consist of Representatives and Senators chosen by the States. The executive is the Executive of the United States, chosen by the electors of the States. The judiciary is the judiciary of the United States, and its powers, its jurisdiction, as has been held many times, as I shall show you, have uniformly been confined to the United States. The power of amendment is in the United States. The limitations upon the power of Congress are those imposed by the States; the sovereignty granted the United States is a sovereignty granted by the States. So that all through that instrument, except, as I say, where it is expressly stated to the contrary, it seems apparent that the only

territory that was in the view of the framers of the Constitution at the time they made the Constitution was the thirteen original States.

Now, then, where it was intended that the Constitution should have extra State jurisdiction, that fact is made clearly to appear. Article IV, section 3, clause 1, provides that new States may be admitted by Congress into this Union. Article IV, section 3, clause 2, provides that Congress shall have the power to dispose of and make all needful rules and regulations respecting the Territories and other property belonging to the United States. And the thirteenth amendment provides that slavery shall not exist within the United States or any place subject to its jurisdiction. It seems to me that the inclusion of that term in the thirteenth amendment is significant. It is the only place in the Constitution where the jurisdiction of the United States is expressly provided for outside of the States. It was to get rid of slavery for all time to come and beyond all possibility of mishap that the clause was inserted. The same men that wrote those words into the thirteenth amendment drew the succeeding amendments, and made no reference at all to any extra State jurisdiction. That, therefore, is an argument to my mind in favor of the proposition that the States only are meant, unless something to the contrary be expressly stated.

The phrase "throughout the United States," which occurs in this paragraph relating to taxation, appears three times in the Constitution. In Article II, section 1, paragraph 2, it is provided that the day on which electors shall be voted for shall be the same throughout the United States. That, of course, could have no reference to any other territory than the United States, it being applicable only to electors. We have, therefore, in that instance, ascertained the meaning of the term "throughout the United States," and it is a fundamental rule of construction that having once ascertained the real meaning of a term in an instrument, that same meaning must accompany the term throughout, unless there be express reasons to the contrary.

In Article I, section 8, paragraph 4, it is provided that bankrupt laws shall be uniform throughout the United States. The first bankruptcy law was confined in terms to the United States. The subsequent bankruptcy laws were extended to the Territories by express provision thought to be necessary for that purpose. Article I, section 8, provides that duties shall be uniform throughout the United States. That is the clause now under consideration. In the same sentence, paragraph 3, Congress is given power to regulate commerce—commerce of the United States and among the several States. This means, of course, the several States of the United States. It can hardly be assumed that the several States did not mean the United States. In point of fact, some of our earliest revenue laws were confined in terms to the United States.

It seems to me, therefore, that if we were confined to the Constitution itself for the meaning of this term "United States," we must necessarily come to the conclusion that what was in the minds of the framers of the Constitution was the original thirteen States and as many others as might be added under the terms of that instrument. If under the term "United States" all the territory under the jurisdiction of the United States was included, it was a useless performance to put into the Constitution an express provision that Congress should "have power to dispose of and make all needful rules and regulations respecting the territory of the United States."

Now, on the other side, as against this proposition, there is cited the case of *Loughborough vs. Blake*, decided in 1823 by Chief Justice Marshall, in which he answers the question "What does the United States mean?" by saying that it means all the territory of the great Republic—the District of Columbia, the Territories beyond the Missouri, and so on. It seems to me perfectly patent that what Chief Justice Marshall said upon that subject was a mere dictum and had no connection at all with the question involved in the case. In 1815 Congress passed a law levying a direct tax and apportioned it among the States, and in that law it named the particular States and apportioned the amounts respectively to those States. Subsequent to the passage of that act Congress passed another act and levied a direct tax upon the District of Columbia. One of the citizens of the District having refused to pay this tax, his property was levied upon, and in an action of trespass the question of constitutional power was raised. In delivering a decision the Chief Justice said:

This case presents to the consideration of the court a single question. It is this: Has Congress a right to impose a direct tax on the District of Columbia?

This question he answered in the affirmative.

Well, of course Congress had a right to impose a direct tax upon the District of Columbia, because under the Constitution Congress is given exclusive control over that District. No necessity arose for the court to define the term "United States." It does not, therefore, necessarily follow that in the disposition of that case anything was involved like the proposition that the United States covered both the United States and Territories, nor did the case decide any such thing. In effect it decided the exact opposite, because it decided that a tax which was uniform throughout the United States, but was not applied to the Territories at all, was a constitutional tax.

So that the case, as it seems to me, is an authority against those gentlemen on the other side who cite it in support of their proposition. And when the framers of the Constitution provided in that instrument that "all duties, imposts, and excises shall be uniform throughout the United States," I put to you the question, by virtue of what authority do you write into the Constitution that which they left out, and say "shall be uniform throughout the United States and Territories?" But there are cases directly in point, some of them decided by this same Chief Justice. It is said that if this is a dictum it is the dictum of the great Chief Justice. And so, I grant you, it is. But when I place against the dictum of the great Chief Justice the decision of the great Chief Justice upon the very point at issue, I think I am justified in asking you to set aside the dictum and to follow the decision.

In a case in which the District of Columbia was again involved, reported in 3 Cranch—the case of *Hepburn vs. Ellzey*—the question arose as to whether or not a citizen of the District of Columbia was a citizen of the United States within the meaning of the term "United States" in the Constitution and therefore entitled to sue in the Federal courts. And now I read what Chief Justice Marshall said:

The question in this case is whether the plaintiffs, as residents of the District of Columbia, can maintain an action in the circuit court of the United States for the district of Virginia. This depends on the act of Congress describing the jurisdiction of that court. That act gives jurisdiction to the circuit courts in cases between a citizen of the State in which the suit is brought and a citizen of another State. To support the jurisdiction in this case, therefore, it must appear that Columbia is a State.

On the part of the plaintiffs it has been urged that Columbia is a distinct political society and is, therefore, "a State" according to the definition of writers on general law. This is true. But as the act of Congress only uses the word "State" in reference to that term as used in the Constitution, it becomes necessary to inquire whether Columbia is a State in the sense of that instrument. The result of that examination is a conviction that the members of the American Confederacy only are the States contemplated in the Constitution.

The House of Representatives is to be composed of members chosen by the people of the several States; and each State shall have at least one Representative. The Senate of the United States shall be composed of two Senators from each State. Each State shall appoint, for the election of the Executive, a number of electors equal to the whole number of Senators and Representatives. These clauses show that the word "State" is used in the Constitution as designating a member of the Union, and excludes from the terms the significance attached to it by writers on the law of nations. When the same term which has been used plainly in this limited sense in the articles respecting the legislative and executive departments is also employed in that which respects the judicial department, it must be understood as retaining the sense originally given to it.

Upon the same line of argument that I suggested a few moments ago Chief Justice Marshall comes to the conclusion that when the framers of the Constitution said "United States," they did not mean "United States and Territories."

The same question substantially arose in the case of a Territory—the case of *New Orleans vs. Winter*, in 1 Wheaton. In this case the court said:

It has been attempted to distinguish a Territory from the District of Columbia, but the court is of opinion that this distinction can not be maintained. They may differ in many respects, but neither of them is a State in the sense in which that term is used in the Constitution. Every reason assigned for the opinion of the court that a citizen of Columbia was not capable of suing in the courts of the United States under the judiciary act is equally applicable to a citizen of a Territory.

Again, in the case of *Barney vs. Baltimore*, reported in 6 Wallace, and decided as late as 1867, the court said with respect to the rulings in these two cases that I have read in your hearing:

These rulings have never been disturbed, but the principle asserted has been acted upon ever since by the courts when the point has arisen.

And in the case of *Texas vs. White*, reported in 7 Wallace, where the question involved was as to the status of the State of Texas by reason of her having joined the rebellious States, the court undertakes to define the word "States" as used in the Constitution, and they say:

A State, in the ordinary sense of the Constitution, is a political community of free citizens occupying a territory of defined boundaries and organized under a government sanctioned and limited by a written constitution and established by the consent of the governed. It is the union of such States under a common constitution which forms the distinct and greater political unit which that constitution designates as the United States. It speaks of the people and States which compose it as "one people and one country." The use of the word in this sense hardly requires further remark. In the clauses which impose prohibitions upon the States with respect to the making of treaties, emitting of bills of credit, and laying duties on tonnage, and which guarantee to the States representation in the House of Representatives and in the Senate, are found similar instances of this use in the Constitution. Others will occur to every mind.

I say, then, that not only from the four corners of the Constitution itself, but from the decisions of the highest court of the land, we are led to believe that the term "United States" in the Constitution does not extend to and cover the Territories.

I ask, now, what was the judgment of the men who made the Constitution and of the men who were contemporaries of the men who made the Constitution with respect to the power under the Constitution to legislate for Territories? And I say that both Federalists and Republicans agreed in the proposition that the

Constitution related only to the States. Let me read you some of the opinions on this subject.

This discussion arose out of the proposition to acquire and out of the subsequent acquisition of the Territory of Louisiana.

Mr. Pickering, of Massachusetts, declared in the Senate that it was not in the power of the President or of Congress to incorporate the Territory into the Union, as the treaty demanded. He did not believe even that an amendment could be made to the Constitution so as to authorize it in the ordinary way, but only by the assent of each individual State, as in a commercial house the consent of each member would be necessary to admit a new partner into the company.

John Quincy Adams agreed with him, but had a remedy to propose. He said:

This is what your ministers, in the very case before you, have confessedly done. It is well known that their powers did not authorize them to conclude this treaty; but they acted for the benefit of their country, and this House, by a large majority, has advised to the ratification of their proceedings. Suppose, then, not only that the ministers who signed, but the President and Senate who ratified this contract, have exceeded their powers. Suppose that the other House of Congress, who have given their assent by passing this and other bills for the fulfillment of the obligations it imposes on us, have exceeded their powers.

Nay, suppose even that the majority of States competent to amend the Constitution in other cases could not amend it in this without exceeding their powers—and this is the extremest point to which any gentleman on this floor has extended his scruples—suppose all this, and there still remains in the country a power competent to adopt and sanction every part of our engagements and carry them entirely into execution. For notwithstanding the objections and apprehensions of many individuals, of many wise, able, and excellent men in various parts of the Union, yet such is the public favor attending the transaction which commenced by the negotiations of this treaty, and which, I hope, will terminate in our full, undisturbed and undisputed possession of the ceded territory, that I firmly believe if an amendment to the Constitution, amply sufficient for the accomplishment of everything for which we have contracted, shall be proposed, as I think it ought, it will be adopted by the legislature of every State in the Union. We can therefore fulfill our part of the conventions, and this is all that France has a right to require of us.

And Thomas Jefferson said:

This treaty must, of course, be laid before both Houses, because both have important functions to exercise respecting it. They, I presume, will see their duty to their country in ratifying and paying for it, so as to secure a good which would otherwise probably never be realized. But they must then appeal to the nation for an additional article to the Constitution, approving and confirming the act which the nation had not previously authorized. The Constitution has made no provision for our holding foreign territory, still less for incorporating foreign nations into our Union. The Executive, in seizing the fugitive occurrence which so much advances the good of their country, have done an act beyond the Constitution.

The Legislature, in casting behind them metaphysical subtleties, and risking themselves, like faithful servants, must ratify and pay for it, and throw themselves on their country for doing unauthorized what we know they would have done for themselves had they been in a situation to do it. It is the case of a guardian investing the money of his ward in purchasing an important adjacent territory and saying to him when of age: "I did this for your good; I pretend to no right to bind you; you may disavow me, and I must get out of the scrape as I can; I thought it my duty to risk myself for you." But we shall not be disavowed by the nation, and their act of indolence will confirm and not weaken the Constitution by more strongly marking out its lines.

And when in the debate it was said that the powers conferred on the President were unconstitutional, the reply was made by the President's advisors that the Constitution was made for States, not for Territories.

Mr. Rodney, of Delaware, said:

It shows that Congress have a power in the Territories that they can not

exercise in the States, and that the limitations of power in the Constitution are applicable to States and not to Territories.

And John Randolph, a Republican of Republicans, said:

Gentlemen will see the necessity of the United States taking possession of this country in the capacity of sovereigns to the same extent as that of the existing government of the provinces.

Now, no constitutional amendment was made, not because Mr. Jefferson, as my friend from Tennessee [Mr. RICHARDSON] said, came to the conclusion that none was necessary, but because it was held by statesmen, as it was subsequently held by the court, that the United States was a sovereign nation, having and entitled to exercise all the powers of any sovereign nation, the right to make war and peace, the right to acquire territory, and as a necessary consequence of that right, the right to govern it without limitation, save that in the discretion of the Congress, its agents in the government.

On the 13th of January, 1803, Mr. Gallatin wrote to Mr. Jefferson, saying with respect to the acquisition of Louisiana:

But does any constitutional objection really exist? To me it would appear, first, that the United States as a nation have an inherent right to acquire territory; second, that whenever that acquisition is by treaty, the same constituted authorities in whom the treaty-making power is vested have the constitutional right to sanction the acquisition.

But we have more than the opinions of the men who were contemporary with the making of this Constitution. We have their express acts, in the shape of legislation, declaratory of what they thought as to the limitations that existed in the ruling of territory acquired under the treaty-making or the war power of the Constitution. What limitations did Mr. Jefferson and his Congress feel binding upon them when they set up a government in Louisiana?

Will anyone contend that Louisiana was governed under a republican form of government and subject to the limitations of the Constitution? Why, Congress turned over to the President the dictatorial power to appoint officers, civil and military, and to delegate to them the government of Louisiana. And Mr. Jefferson appointed one man as governor-general and intendant, two offices that had been filled under Spanish rule by different men. And this man had the power to make laws. He had the power to dispose of the finances. He had the power to review the decisions of the courts. There was no such thing as jury trial in Louisiana. There was an ecclesiastical establishment in Louisiana, and priests and curates were paid out of the Louisiana treasury.

There were the old medieval laws, long since gone out of use amongst civilized peoples, such as cutting out a man's tongue for the offense of blasphemy, and all that sort of thing.

[Here Mr. WILLIAMS of Mississippi rose.]

I suppose my friend was going to say that this was merely the temporary government of Louisiana, and so it was; but what was the permanent government of Louisiana as a Territory? It was better in this respect, that despotic power was not placed in the hands of one man in Louisiana; but it was no better in this, that despotic power still remained in the hands of one man who occupied the Executive chair as President of the United States.

Let me read you what the historian Adams says with respect to this government, set up by the gentlemen who were contemporaries with the framers of the Constitution:

It created a Territorial form of government in which the people of Louisi-

sians were to have no share. The governor and secretary were to be appointed by the President for four years. The legislative council, constituted of thirteen members, was to be appointed by the President without consulting the Senate, and was to be convened and prorogued by the governor as he might think proper. The judicial officers, also appointed by the President, were to hold office for four years instead of the usual term of good behavior.

The bill—

Said the historian—
seemed to set the new Territory apart as a peculiar estate, to be governed by the power employed in the right to acquire it.
With the passage of this act and its twin statute for collecting duties in the ceded territory the precedent was complete. Louisiana received a government in which its people, who had been solemnly promised all the rights of American citizens, were set apart, not as citizens, but as subjects lower in the political scale than the meanest tribes of Indians, whose right to self-government was never questioned. By these measures the Executive and the Legislature recorded their decision in regard to the powers of government over national territory.

Was there ever a plainer declaration made under the solemn responsibilities of official duty that the limitations of the Constitution do not apply to the government of Territories than was made by the President and Congress in dealing with Louisiana?

Now, Louisiana came into the Union under the terms of a treaty with France known as the Louisiana treaty, of April 30, 1803, which provided:

The inhabitants of the ceded territory shall be incorporated in the Union of the United States, and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of liberty, property, and the religion which they profess.

The inhabitants of Louisiana protested that this treaty obligation was not being observed; that they were not recognized as citizens of the United States; and they presented a memorial to Congress, and in that memorial and in the answer that Congress gave we may find another illustration of the opinion of the fathers as to whether or not the limitations of the Constitution apply to Territories. These gentlemen said:

A governor is to be placed over us whom we have not chosen, whom we do not even know, who may be ignorant of our language, uninformed of our institutions, and who may have no connections with our country or interest in its welfare.

This governor is vested with all executive and almost unlimited legislative power; for the law declares that, "by and with the advice and consent of the legislative body, he may change, modify, and repeal the laws," etc. But this advice and consent will no doubt in all cases be easily procured from the majority of a council selected by the president or governor and dependent on him for their appointment and continuance in office; or if they should prove refractory, the power of prerogative frees him from any troublesome interference until a more prudent selection at the end of the year shall give him a council better suited to his views. The legislative power, then, is vested in the governor alone. The council operates as a cloak to conceal the extent of his authority, to screen him from the odium of all unpopular acts, to avoid all responsibility, and give us the faint semblance of a representative assembly, with so few of its distinguishing features that unless the name were inscribed on the picture it would be difficult to discover the object for which it was intended.

Now, how did Congress answer this protest of these people in Louisiana? Mr. John Randolph, from the approval of the House to take into consideration the memorial, reported on January 23, 1805. I read only a short extract:

They shall be incorporated into the Union and admitted—to what? To the enjoyment of all the rights, etc., of American citizens. When? As soon as it can be done in conformity with the principles of the Federal Constitution; meanwhile they are to be protected, etc.

Could any doubt be excited of the soundness of this construction of the English context it would be instantly dissipated by a recurrence to its counterpart in the French language, if the manifest absurdity of the concluding

words of the article, which would result from an opposite interpretation, should fail to remove it. For what necessity could exist for a provision securing to the inhabitants of Louisiana the temporary enjoyment of certain minor privileges, when their immediate admission to all the rights of American citizens was one of the conditions on which their country was transferred to the United States by France?

Whether the words "as soon as possible, according to the principles of the Federal Constitution," be understood to refer to any change, which, in conformity with its own principles, might at some future period be made in that instrument, or to that provision of the Constitution which requires the rule of naturalization to be uniform, they are equally fatal to the claim urged by the memorialists of their right to an immediate participation of those benefits which they can not possess in their full extent, until admitted to their enjoyment by the principles of the Constitution. The imputation, therefore, of a want of good faith in the Government of the United States is not more insupportable by the language of the third article of the treaty of Paris than it is repugnant to the uniform tenor of the American character, from the commencement of the national existence.

So that to the complaint that those people occupying a Territory belonging to the United States had made, that they had no rights under the Constitution, Mr. Randolph made answer in the House of Representatives, telling them that it was true that they had no rights until the time should come when Congress should see fit to admit them into the Union.

Now, Mr. Chairman, I fear that I am spending too much time upon this particular branch of the case, but it seems to me that the history of the Louisiana purchase, the legislation, and the opinions of our statesmen with respect thereto, all furnish cogent arguments in favor of the proposition that the term "United States" in the Constitution does not carry the limitations of that instrument to the government of Territories.

Up to this time we have seen what construction the executive and legislative branches of the Government have put upon the Constitution in its relation to Territories.

I now advance a step further and say that the courts have adopted and indorsed that construction. In the case of *Sere vs. Petot*, reported in 6 Cranch, the court said:

The power of governing and legislating for a Territory is the inevitable consequence of the right to acquire and hold territory. Could this position be contested, the Constitution of the United States declares that "Congress shall have power to make all needful rules and regulations respecting the territory of the United States."

Accordingly, we find Congress possessing and exercising the absolute and undisputed power of governing and legislating for the Territory of New Orleans. Congress has given them a legislature, an executive, and a judiciary, with such powers as it has been their will to assign to these departments, respectively.

I shall show as my argument proceeds that this is the uniform doctrine of the courts upon this subject.

Now, we have had various acquisitions since that of Louisiana. Each and all of them have come to us by treaty, and in each and every case, except in that of Alaska, it was thought necessary to limit the unlimited power of the Congress to deal with these Territories belonging to the United States by treaty provision which should secure for them the right of ultimate admission to the United States, and in the meantime protection to their inhabitants in their life, liberty, property, and religion. All the legislation and all the cases decided by the courts with respect to these Territories are to be read in the light of those treaty provisions.

In the treaty with Spain known as the Florida purchase, in 1821, it was provided that—

The inhabitants of the territories which His Catholic Majesty cedes to the United States by this treaty shall be incorporated in the Union of the United States as soon as may be consistent with the principles of the Federal Con-

situation and admitted to the enjoyment of the privileges, rights, and immunities of the citizens of the United States.

In the treaty with Mexico concluded in 1848 a substantially similar provision occurs.

And in the treaty with Mexico concluded in 1854, known as the Gadsden treaty, there was a substantially similar provision.

In the treaty with Russia, concluded in 1867, there was no provision for the incorporation of the Territory of Alaska into the Union, but there was a provision that the inhabitants, with the exception of uncivilized native tribes, should have the immunities of citizens of the United States and should be maintained and protected in the free enjoyment of their liberty, property, and religion.

As these treaties were under the Constitution the supreme law of the land, it will be observed that the unlimited power of Congress to deal with the territory ceded was expressly limited to the extent provided for by the treaties.

Had it not been for these treaty provisions the power of Congress to dispose of and make all needful rules and regulations—needful in its judgment, mark you—with respect to the territory belonging to the United States would have vested an unlimited power in the Congress.

In the case of the acquisition of the Philippines and of Puerto Rico by the terms of the treaty the political status of the native inhabitants of the islands is to be determined by Congress; and its power therefore with respect to them, whether that power be the result of our power to acquire or of the constitutional power to dispose of and make all needful rules and regulations, is unlimited.

As a matter of legislative history these acquisitions have always been governed by acts of Congress, made applicable to each in its turn, and they have been governed by such laws as Congress saw fit to prescribe, based upon the requirements of each individual case.

With respect to all of them the principle recognized in the case of Louisiana has been affirmed, namely, the principle that Territorial laws are dependent entirely upon Congressional action.

If the provisions relating to any department created by the Constitution are inapplicable beyond the States, then the provisions of all its departments must be inapplicable beyond the States. It seems to me that this must be admitted. There is no distinction drawn in the Constitution between the jurisdiction of the executive, the legislative, and the judicial departments.

Article III, section 1, of the Constitution reads:

The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior.

It is then further provided that—

The judicial power of the United States shall extend to all cases of maritime and admiralty jurisdiction.

Mr. Webster said that the legislature and judiciary of the Territories have always been established by a law of Congress, and the decisions of the Supreme Court from the earliest down bear him out in the assertion. The first case to which I call your attention is the case of *Benner against Porter* reported in 9 Howard, page 242. It is there said:

The distinction between the Federal and State jurisdictions, under the Constitution of the United States has no foundation in these Territorial governments, and consequently no such distinction exists, either in respect to the

jurisdiction of their courts or the subjects submitted to their cognizance. They are legislative governments and their courts legislative courts. Congress, in the exercise of its powers in the organization and government of Territories, combining the powers of both the Federal and State authorities. There is but one system of government or of laws operating within their limits, as neither is subject to the constitutional provisions in respect to State and Federal jurisdiction.

They are not organized under the Constitution, nor subject to the complex distribution of the powers of government as the organic law, but are creations, exclusively, of the legislative department and subject to its supervision and control.

Mr. TERRY. I would like to ask the gentleman a question.

Mr. DALZELL. All right, although I prefer not to be interrupted.

Mr. TERRY. I want to ask the gentleman if, under the logic of his contention, Congress could have instituted free trade with Arizona and high-protection tariff with New Mexico.

Mr. DALZELL. Yes.

Mr. TERRY. I only wanted to know where the gentleman's logic went.

Mr. DALZELL. I am not afraid of my logic. I say it could.

Now, in the case of *Canter*, Chief Justice Marshall said, upon this same subject, speaking of the courts of Florida:

These courts, then, are not constitutional courts in which the judicial power conferred by the Constitution on the General Government can be deposited. They are incapable of receiving it. They are legislative courts, created in virtue of the general right of sovereignty which exists in the Government, or in virtue of that clause which enables Congress to make all needful rules and regulations respecting the territory belonging to the United States.

The jurisdiction with which they are invested is not a part of that judicial power which is defined in the third article of the Constitution, but is conferred by Congress in the execution of those general powers which that body possesses over the Territories of the United States. Although admiralty jurisdiction can be exercised in the States in those courts only which are established in pursuance of the third article of the Constitution, the same limitation does not extend to the Territories. In legislating for them Congress exercises the combined powers of the General and of the State governments.

The same doctrine is affirmed in *Clinton vs. Engelbrecht* (13 Wallace, 434). The court said:

There is no supreme court of the United States, nor is there any district court of the United States in the sense of the Constitution, in the Territory of Utah. The judges are not appointed for the same terms, nor is the jurisdiction which they exercise part of the judicial power conferred by the Constitution of the General Government. The courts are the legislative courts of the Territories, created in virtue of that clause which authorizes Congress to make all needful rules and regulations respecting the Territories belonging to the United States.

In *Reynolds vs. United States* (98 U. S., 145) it was held that the laws relating to the number of grand jurors requisite depended upon the rule, not of the United States, but of the Territorial court.

In *The City of Panama* (101 U. S., 453) the courts of Washington Territory were held clothed by an act of Congress with admiralty jurisdiction.

In *McAllister vs. United States* (141 U. S., 174) it was held that the judges of the district court of Alaska was not a judge contemplated by the Constitution, and was subject to removal by the President.

And so I might multiply cases, but I refrain. It is perfectly clear, therefore, that so far as the judicial decisions go, there are at least two departments created by the Constitution, where there are no limitations upon the power of Congress with respect to Territories—the legislative and the judicial.

Mr. HOPKINS. Mr. Chairman, I ask unanimous consent that

the gentleman from Pennsylvania be allowed to complete his remarks.

The CHAIRMAN. The gentleman from Illinois asks unanimous consent that the gentleman from Pennsylvania have time to complete his remarks. Is there objection? [After a pause.] The Chair hears none.

Mr. DALZELL. But it is contended, Mr. Chairman, that immediately upon the acquisition of territory by the United States the Constitution ex proprio vigore is extended to that territory. That, Mr. Chairman, was the ground assumed in the argument of that great case which really, by its decision, covers all these questions and which has been affirmed over and over again—the case of the American Insurance Company vs. Canter.

It was contended in that case by the counsel for the appellant before the court, first, that the people in the Territories of the United States are citizens entitled to all the benefits derived from the laws and the Constitution of the United States and subject to all the provisions of the Constitution and the laws passed under it; second, that in principle there can be no difference between a Territory formed out of a country within the old limits of the United States and a Territory in a newly-acquired country, and, third, that therefore the people of Florida, immediately upon its cession, or at any rate upon the passing of the act instituting the Territorial government, became citizens of the United States, to whom the laws and Constitution extended.

On the other hand, Mr. Whipple, who was with Mr. Webster for claimant, said:

Much argument has been used to show that the Constitution and laws of the United States are, *per se*, in force in Florida, and that the inhabitants are citizens of the United States.

How if the Constitution became of force in Florida has not been shown. Was it by the act of cession? Is there any principle in the law of nations which upon the act of cession or conquest gives to the ceded or conquered country a right to participate in the privileges of the constitution of the parent country? The usages of nations, from the period of Grecian colonization to the present moment, are precisely the reverse. Such a right never was asserted. The Constitution was established by the people of the United States for the United States. It provides for the future admission of countries into the Union, and expressly confers upon Congress the power of governing them as Territories until they are admitted as States.

If the Constitution was in force in Florida, why was it not represented in Congress? Why was it necessary to pass an act of Congress extending several of the laws of the United States to Florida? Why did Congress designate particular laws, such as the crimes act, the slave trade and revenue acts, and introduce them as laws into Florida? Why enumerate particular rights secured to the people of the United States if the inhabitants of Florida were entitled to them on the act of cession?

Arguing upon the same side, Mr. Webster, in his argument, said: What is Florida? It is no part of the United States. How can it be? How is it represented? Do the laws of the United States reach Florida? Not unless by particular provisions. The Territory and all within it are to be governed by the acquiring power, except where there are reservations by treaty. By the law of England, when possession is taken of territories, the King, Jure coronæ, has the power of legislation until Parliament shall interfere.

Congress has the *jus coronæ* in this case, and Florida was to be governed by Congress as she thought proper. What has Congress done? She might have done anything; she might have refused the right of trial by jury and refused a legislature. She has given a legislature to be exercised at her will; and a government of a mixed nature, in which she has endeavored to distinguish between State and United States jurisdiction, anticipating the future erection of the Territory into a State. Does the law establishing the court of Key West come within the restrictions of the Constitution of the United States? If the Constitution does not extend over this Territory, the law can not be inconsistent with the national Constitution.

Now, what did Chief Justice Marshall say in deciding the case? He said, first and foremost:

The Constitution confers absolutely on the Government of the Union the

powers of making war and of making treaties; consequently that Government possesses the power of acquiring territory either by conquest or by treaty.

And then, addressing himself to the doctrine that the Constitution is extended to ceded territory ex proprio vigore, and speaking of the inhabitants of Florida, he said:

They do not participate in political power; they do not share in government until Florida shall become a State. In the meantime Florida continues to be a Territory of the United States, governed by virtue of that clause in the Constitution which empowers Congress "to make all needful rules and regulations respecting the territory or other property belonging to the United States."

Perhaps the power of governing territory belonging to the United States which has not, by becoming a State, acquired the means of self-government may result necessarily from the fact that it is not within the jurisdiction of any particular State and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, the possession of it is unquestioned.

Now let me say in this connection that when my friend from Tennessee, referring to Mr. Webster's argument in the Canter case, said that Mr. Webster had never as a public man affirmed the unlimited power of Congress, and that no particular regard was to be placed upon his argument as a lawyer, he was mistaken. I will show the gentleman later on that in the closing years of Mr. Webster's life, as a United States Senator, he affirmed, in one of the greatest speeches of his life, the same doctrine that as counsel he so ably argued before Chief Justice Marshall in the case of the American Insurance Company vs. Canter.

But I come now, Mr. Chairman, to a speech made by Mr. Webster upon this question as to the extension of the Constitution by its own power over ceded territory, an argument made by him in the great discussion that preceded the admission of California and New Mexico into the Union. This speech will be found in the Congressional Globe, volume 20, page 273. Mr. Webster said:

It is of importance that we should get some conception of what is meant by the proposition in a law "to extend the Constitution of the United States to the Territories." Why, sir, the thing is entirely impossible. All the legislation in the world, in this general form could not accomplish it. There is no cause for the operation of the legislative power in such a manner as that. The Constitution, what is it? We extend the Constitution of the United States to territory. What is the Constitution of the United States? It is not its very first principle that all within its influence and comprehension shall be represented in the Legislature which it establishes, but not only a right of debate and a right to vote in both Houses of Congress, but a right to partake in the choice of a President and Vice-President? And can we try to extend these rights or any of them to a Territory of the United States? Everybody will see that it is altogether impracticable.

Let me say that in this general sense there is no such thing as extending the Constitution. The Constitution is extended over the United States, and over nothing else. It can not be extended over anything except over the old States and the new States that shall come in hereafter, when they do come in. There is a want of accuracy of ideas in this respect that is quite remarkable among eminent gentlemen. It seems to be taken for granted that the right of trial by jury, the habeas corpus, and every principle designed to protect personal liberty, are extended by force of the Constitution itself over every new Territory. The proposition can not be maintained at all. * * * Undoubtedly these rights must be conferred by law before they can be enjoyed in a Territory.

The gentleman from Massachusetts [Mr. McCALL], my colleague on the committee, quotes from Mr. Webster, and the gentleman from Tennessee quoted from him again the same passage, about the powers of monarchies ruling distant colonies, and all that sort of thing. Why, Mr. Webster said that in a speech when he was questioning the right to continue the war against Mexico and when he denied that we could admit new territories into our Union without imperiling it. But when he came to discuss this

subject—when he came to talk about the power of Congress in the Territories, in a speech made two years after that quoted, he made use of this language, and I call the attention of my from Tennessee to it:

As to the power of Congress, I have nothing to add to what I said the other day. Congress has full power over the subject. It may establish any such government and any such laws in the Territories as, in its discretion, it may see fit. It is subject, of course, to the rules of justice and propriety, but it is under no constitutional restraint.

[Applause.]

The same principle that as counsel he advocated in his early manhood he advocated in a still more emphatic and unqualified form in his maturer years, peerless statesman of the Republic as he was at that time.

Mr. WILLIAMS of Mississippi. Will not the gentleman allow me a single suggestion?

Mr. DALZELL. I hope the gentleman will not interrupt me. I shall have difficulty, at any rate, in getting through with my remarks within the time to which I must confine myself.

Mr. WILLIAMS of Mississippi. Will not the gentleman allow me to call his attention to the fact that the extract read by him from the language of Daniel Webster was a part of an argument made by Mr. Webster as an attorney?

Mr. DALZELL. The gentleman is mistaken. I read from a speech that Mr. Webster made in the Senate.

A MEMBER. In what year?

Mr. DALZELL. In 1848, I think. A gentleman near me says in 1849.

The truth is, Mr. Chairman, that this doctrine of the extension of the Constitution by its own strength was advanced by Mr. Calhoun in the interest of slavery.

Mr. Calhoun first announced the doctrine that Congress had no power to prohibit slavery in the territory; but when free-soil New Mexico and California were acquired, it became necessary for him to take a step in advance, and he therefore announced the new dogma that the Constitution ex proprio vigore extended to the newly acquired territory and that, slaves being property under the Constitution, slavery could exist in that new territory. Let me quote from Mr. Benton (Thirty Years in the United States Senate, volume 3, page 713):

A new dogma was invented to fit the case—that of the transmigration of the Constitution (the slavery part of it) into the Territories—overriding and overruling all the anti-slavery laws which it found there, and planting the institution there under its own wing, and maintaining it beyond the power of eradication either by Congress or the people of the Territory. Before this dogma was proclaimed efforts were made to get the Constitution extended to these Territories by act of Congress; failing in those attempts, the difficulty was leaped over by boldly assuming that the Constitution went of itself—that is to say, the slavery part of it.

History can not class higher than as a vagary of a diseased imagination this imputed self-acting and self-extension of the Constitution. The Constitution does nothing of itself—not even in the States for which it was made. Every part of it requires a law to put it into operation. No part of it can reach a Territory unless imparted to it by act of Congress.

This vagary of a diseased imagination, this transmigratory power of the Constitution, has received the reprobation of some of the most distinguished statesmen in our history. I will not detain the committee by quoting from any but a few.

Henry Clay said in a speech in the Senate, on February 5, 1850, that—

The public law of the world, of reason, and of justice is that Congress has

the right to legislate for the Territories from the very moment they are acquired by conquest or treaty; and this point has been settled by all the elementary authorities and by the uniform interpretation and action of every department of our Government.

Horace Mann, of Massachusetts, said in Congress in 1850:

The argument that by the cession of new Territories the Constitution, by some magical elasticity, extends itself over them does not rise to the dignity of a sophism. The Constitution is a compact between States, not Territories. Otherwise the people of the Territories would have all the rights under the Constitution that the people of the States have; for example, the right to choose electors for President and Vice-President and to be represented in Congress by a member who can vote as well as speak.

So late as 1850, in a speech in this House, in the Thirty-ninth Congress, Mr. Stevens, of Pennsylvania, discussed the question of the right of sovereignty of the United States over territory and people acquired by cession. In that discussion he said:

For sixty years and upward, after the passage of the ordinance of 1787 and the adoption of the Constitution, no one seriously doubted the right of Congress to control the whole legislation of the Territories, to establish Territorial governments, create courts, fix the tenure of the judges and other officers; in short, to exercise all acts of municipal as well as political legislation. For sixty years all that authority has been exercised over the Northwestern territory, the Southwestern territory, over Louisiana, Florida, and Oregon. In the meantime the question had been definitely and conclusively settled by all the branches of the Government—by Presidents, by Congresses, by repeated decisions of the Supreme Court of the United States. Elementary writers—Story, Rawle, and others—had so laid down the law.

By the law of nations, when a nation acquires territory, either by conquest or treaty, it becomes subject to the will of the acquiring power. The laws of such power, however, do not spread over it until some express legislation. In the meantime their own laws remain in full force. Not unfrequently such subject provinces are for a long time governed by very different laws from those of the country to which they become attached. Canada and other British provinces are to this day. But the very fact of acquisition gives to the sovereign power of the acquiring state all power to legislate for such acquisitions. It requires no constitutional or treaty provision. Wherever the legislative power of the new sovereign is placed, whether in king, parliament, or Congress, there is the whole and only power to govern them.

Our Constitution places the legislative power in Congress. Consequently, Congress has exclusive power over the territories newly acquired. The Constitution itself does not extend to them, and can have no influence upon them, except so far as it creates and defines the legislative organ of the sovereign will of the nation. None of the officers in the Territories hold by a constitutional tenure. No law of the United States was ever supposed to be extended to any of the Territories by the mere force of the Constitution. The provision for the return of fugitive slaves does not extend to the Territories. Any slave escaping or being taken into New Mexico or California would be instantly free. Hence, by the act of 1850 express provision for the subject was made with regard to the Territories which we then had.

But with respect to the particular subject that we are discussing, the subject of imposing duties, there are express decisions holding this same doctrine. The case of Fleming vs. Page (9 Howard, 605), to which I beg leave to refer for a moment, was this: The port of Tampico had been taken by the United States in the war with Mexico; duties were collected at the port of Philadelphia upon a cargo shipped from Tampico, and the question was whether or not those duties could be lawfully collected, Tampico being, as Philadelphia was, in the possession of the United States. The court held that Tampico was a foreign port within the meaning of the tariff law then existing, and that duties were properly levied upon goods imported into the United States from Tampico. The court said:

This construction of the revenue laws has been uniformly given by the administrative department of the Government in every case that has come before it. And it has, indeed, been given in cases where there appears to have been stronger ground for regarding the place of shipment as a domestic port. For after Florida had been ceded to the United States, and the forces

of the United States had taken possession of Pensacola, it was decided by the Treasury Department that goods imported from Pensacola before an act of Congress was passed erecting it into a collection district and authorizing the appointment of a collector were liable to duty; that is, that although Florida had, by cession, actually become a part of the United States and was in our possession, yet, under our revenue laws, its ports must be regarded as foreign until they were established as domestic by act of Congress; and it appears that this decision was sanctioned at the time by the Attorney-General of the United States, the law officer of the Government.

And although not so directly applicable to the case before us, yet the decisions of the Treasury Department in relation to Amelia Island and certain ports in Louisiana, after that province had been ceded to the United States, were both made on the same grounds. And in the latter case, after a custom-house had been established by law at New Orleans, the collector at that place was instructed to regard as foreign ports Baton Rouge and other settlements still in the possession of Spain, whether on the Mississippi, the Gulf, or the sea coast. The Department in no instance that we are aware of since the establishment of the Government has ever recognized a place in a newly acquired country as a domestic port from which the coasting trade might be carried on, unless it had been previously made so by act of Congress.

The principle thus adopted and acted upon by the executive department of the Government has been sanctioned by the decisions in this court and the circuit courts whenever the question came before them. We do not propose to comment upon the different cases cited in the argument. It is sufficient to say that there is no discrepancy between them. And all of them, so far as they apply, maintain that under our revenue laws every port is regarded as a foreign one unless the custom-house from which the vessel clears is within a collection district established by act of Congress and the officers granting the clearance exercise their functions under the authority and control of the laws of the United States.

And precisely the same doctrine was held in *Cross vs. Harrison* (16 Howard, 160), although that case is cited as an authority upon both sides of this question. The case was this: The port of San Francisco came into possession of the United States during the war with Mexico. A military governor, exercising belligerent rights, imposed a schedule of tariff duties. Subsequently California became a part of the United States by treaty; but without regard to that treaty the military governor still continued to impose and collect duties until the time of the arrival of a collector appointed under an act of Congress.

The question was as to the power of this governor to collect those taxes before the cession to the United States, and his power to collect them afterwards, and that was the only question in the case. The court said:

Our conclusion, from what has been said, is that the civil government of California, organized as it was from a right of conquest, did not cease or become definite in consequence of the signature of the treaty, or from its ratification. We think it was continued over a ceded conquest without any ratification of the Constitution or laws of the United States, and that, until Congress legislated for it, the duties upon foreign goods imported into San Francisco were legally demanded and lawfully received by Mr. Harrison, the collector of the port, who received his appointment, according to instructions from Washington, from Governor Mason.

In other words, this case decided that the laws in operation in an acquired territory continue in operation until new laws shall be made by Congress.

Mr. Chairman, I must leave many of these points that I had intended to discuss, as time passes rapidly. I hasten on to say that there is not a single case in all of the cases decided by the Supreme Court that is at variance with the doctrine that I have sought to establish. Many cases have been cited in opposition, and you will find many dicta, but they are only dicta, against my position. The cases cited relate generally to territory where a treaty right existed—a compact with the United States securing to the inhabitants of the territory the rights of American citizens. These cases are substantially all reviewed by Mr. Justice Brewer

in the case of the *American Publishing Company vs. Fischer* (166 U. S., 497). In that case Justice Brewer said:

Whether the seventh amendment of the Constitution of the United States, which provides that "in suits at common law, where the value in controversy shall exceed \$20, the right of trial by jury shall be preserved," operates ex proprio vigore to invalidate this statute may be a matter of dispute. In *Webster vs. Reid* (2 Howard, 437) an act of the legislature of Iowa dispensing with a jury in a certain class of common-law actions, was held void. While in the opinion, on page 440, the seventh amendment was quoted, it was also said: "The organic law of the Territory of Iowa, by express provision and by reference, extends the laws of the United States, including the ordinances of 1787, over the Territory as far as they are applicable;" and the ordinance of 1787, article 2 in terms provided that "the inhabitants of said Territory shall be entitled to the benefit of the writ of habeas corpus and of trial by jury." So the validity may have been adjudged by reason of conflict with Congressional legislation.

In *Reynolds vs. United States* (98 U. S., 145, 154) it was said, in reference to a criminal case coming from the Territory of Utah, that "by the Constitution of the United States (Amendment VI) the accused was entitled to a trial by an impartial jury." Both of these cases were quoted in *Callan vs. Wilson* (27 U. S., 540) as authorities to sustain the ruling that the provisions of the Constitution of the United States relating to trial by jury are in force in the District of Columbia. On the other hand, in *Mormon Church vs. United States* (136 U. S., 1, 44) it was said by Mr. Justice Bradley, speaking for the court:

"Doubtless Congress, in legislating for the Territories, would be subject to those fundamental limitations in favor of personal rights which are formulated in the Constitution and its amendments; but these limitations would exist rather by inference and the general spirit of the Constitution from which Congress derives all its powers, than by any express and direct application of its provisions." And in *McAllister vs. United States* (141 U. S., 174) it is held that the constitutional provision in respect to the tenor of judicial offices did not apply to Territorial judges.

And then, most significant of all, in this, the most recent of the cases, Judge Bradley, avoiding an express decision on the constitutional question, adds:

But if the seventh amendment does not operate in and of itself to invalidate this Territorial statute, then Congress has full control over the Territories, irrespective of any express constitutional limitations, and it has legislated in respect to this matter.

In *Callan vs. Wilson* the point at issue was whether a citizen of the District of Columbia was entitled to the provisions of the Constitution relating to trial by jury. Held that he was. It could hardly have been held otherwise, since the District of Columbia was carved out of Maryland and Virginia, two of the original parties to the Constitution, and since especially by act of Congress of February 21, 1871, the Constitution had been expressly extended to the District.

In *Thompson vs. Utah* (170 United States, 343) defendants committed grand larceny in 1895, when Utah was a Territory.

By the statutes of the Territory then in force they were entitled to be tried by a jury of twelve men.

When Utah became a State, its constitution provided for a trial by a jury of eight.

Held that this was an ex post facto law and infringed the Constitution of the United States. The provisions of the Constitution had been extended over Utah by act of Congress in 1850.

All of these cases were decided us to the law in places where the constitutional power of Congress had been limited. That it is plenary and unlimited under the Constitution will appear from the decision in *In re Ross* (140 U. S., 453).

Ross, the petitioner, was one of the crew of an American ship, and when lying in the harbor of Yokohama made an assault upon and killed one of the officers of the vessel. He was arrested and tried before the American consular-general and four associates for

murder. He was convicted, and, his death sentence having been commuted, was sent to the penitentiary at Albany. He sought release therefrom upon a writ of habeas corpus, and it was argued that his conviction was unlawful because he had not had the benefit of the constitutional provision which secures a common-law trial. The court that tried him was constituted by virtue of a treaty between the United States and Japan. The Supreme Court affirmed the finding of the consular court and held that Congress had power, irrespective of any limitations in the Constitution, to provide for the creation of the court contemplated by the treaty.

The court said:

By the Constitution a government is ordained and established for the United States of America and not for countries outside of their limits. The guarantees it affords against the accusation of capital or infamous crimes, except by indictment and presentment by grand jury, and for the impartial trial by a jury when thus accused, apply only to citizens and others within the United States, or who are brought there for trial for alleged offenses committed elsewhere, and not to residents or temporary sojourners abroad. The Constitution can have no operation in any other country.

In the case of *United States vs. Dawson* (13 Howard, 467) it was held that the sixth amendment to the Constitution, which declares that—

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law—

did not apply to the case of the defendant, who was indicted in a Federal court in Arkansas for a murder committed in the Indian Territory. The district in which the trial was had had been created subsequent to the commission of the crime. Speaking of the constitutional provision, the court said:

It will be seen from the words of this amendment that it applies only to the case of offenses committed within the limits of a State; and whatever might be our conclusion, if this offense had been committed within the State of Arkansas, it is sufficient here to say, so far as it affects the proposition, that the offense was committed out of its limits and within the Indian Territory.

It seems to me that the conclusion is irresistible that the power of Congress with respect to trials outside of the United States, except when limited in terms, is plenary and unlimited.

With respect to the cases cited, involving the question of jury trials, it may be said further that even if they furnished decisions instead of opinions—mere obiter dicta—they would not be decisive of the question now under discussion. They related to an entirely different condition of things from that now presented.

(1) They all had to do with territory belonging to the United States acquired for the purposes of statehood and with respect to which the general and plenary power of Congress had been modified by treaty stipulations.

(2) They all had to do with territory over which Congress had legislated, provided a code of laws, and, so far as might be, extended the provisions of the Constitution.

With respect to Puerto Rico, on the other hand, we have not legislated, but are just about to do so. Unhindered by treaty or other stipulations or causes, Congress has both the constitutional "power to dispose of and make all needful rules and regulations," and also all the combined powers of both the State and Federal governments.

That in governing territory belonging to the United States the power of Congress is absolute has uniformly been asserted by writers on the Constitution and by the Supreme Court.

Judge Story is an authority who I am sure will command the highest respect. He says:

The power of Congress over the public territory is clearly exclusive and universal, and their legislation is subject to no control, but is absolute and universal, unless so far as it is affected by stipulations in the cession or by the ordinance of Congress, under which any of it has been settled.

And again, at section 1324:

As the General Government possesses the right to acquire territory, either by conquest or by treaty, it would seem to follow as an inevitable consequence that it possesses the power to govern what it has acquired. The territory does not, when so acquired, become entitled to self-government, and it is not subject to the jurisdiction of any State. It must, consequently, be under the dominion and jurisdiction of the Union, or it would be without any government at all. In cases of conquest the usage of the world is, if a new territory is not wholly subdued, to consider the conquered territory as merely held by military occupation until its fate shall be determined by a treaty of peace. But during this intermediate period it is exclusively subject to the government of the conqueror. In case of confirmation or cession by treaty the acquisition becomes firm and stable, and the ceded territory becomes a part of the nation to which it is annexed, either on terms stipulated in the treaty or on such as its new master shall impose.

The relations of the inhabitants with each other do not change, but their relations with their former sovereign are dissolved, and new relations are created between them and their new sovereign. The act transferring the country transfers the allegiance of its inhabitants. But the general laws not strictly political remain as they were until altered by the new sovereign. If the treaty stipulates that they shall enjoy the privileges, rights, and immunities of citizens of the United States, the treaty, as a part of the law of the land, becomes obligatory in these respects. Whether the same effect would result from the mere fact of their becoming inhabitants and citizens by the cession without any express stipulation may deserve inquiry if the question should ever occur. But they do not participate in political power until they become a State and are admitted into the Union as such. Until that period the territory remains subject to the Government in such manner as Congress shall direct, under the clause of the Constitution now under consideration.

In the last section he follows and uses almost the exact language of Chief Justice Marshall in *American Insurance Company vs. Canter*.

And in the case of *United States vs. Kagana* (118 U. S., 375, 380) Justice Miller says:

But this power of Congress to organize Territorial governments and make laws for their inhabitants arises not so much from the clause in the Constitution in regard to disposing of and making rules and regulations concerning the territory and other property of the United States as from the ownership of the country in which the Territories are and the right of exclusive sovereignty which must exist in the National Government and can be found nowhere else.

And Mr. Justice Bradley, in the case of *Mormon Church vs. The United States*, a very recent case, says:

The power of Congress over the Territories of the United States is general and plenary, arising from and incidental to the right to acquire the territory itself, and from the power given in the Constitution to make all needful rules and regulations respecting the territory or other property belonging to the United States.

It would be absurd to hold that the United States had power to acquire territory and no power to govern it when acquired. The power to acquire belonged to the United States at the adoption of the Constitution, is derived from the treaty-making power and the power to declare and carry on war. The incidents of these powers are those of national sovereignty and belong to all independent governments.

But, Mr. Chairman, I shall not weary the committee with further citations. To my mind it is clear upon reason and authority that Congress has the unquestionable power to pass this bill.

Mr. Chairman, if we are compelled to legislate subject to the limitations of the Constitution, we can not, in my judgment, govern the Philippines and Puerto Rico so as to secure both their

welfare and our own. We must let them go, or we must secure a constitutional amendment, or we must govern by that method which I have seen so many times suggested, and which seems to find favor in this House, by allowing the Executive to govern as he is governing in the Philippines and in Puerto Rico to-day. But when you suggest that method to me I ask you what limitations are there in the Constitution upon the power of Congress that do not exist upon the power of the President of the United States? [Applause on the Republican side.]

The President of the United States is in possession of the Philippines to-day because, as President, he is under a sworn obligation to see that the laws shall be faithfully executed, and he is in possession of Puerto Rico to-day, an island in a condition of peace, simply as the trustee for the American people, to hold that island until the Congress of the American people shall prescribe the method of its government. [Applause on the Republican side.]

Now, Mr. Chairman, I pass over the question as to the policy of this bill. I do not care to discuss at length what the gentleman who preceded me [Mr. PAYNE] has already discussed—the reasons why we should impose this duty upon Puerto Rico.

To my mind the great question presented by this bill rises above any material considerations. It is not with me a question of dollars and cents. It is a question of the constitutional power of Congress to deal with these possessions in such a way that that dealing shall inure to their advantage and to ours.

So far as Puerto Rico is concerned, it is not a question of sentiment. It is a plain, practical business question. I admire the loyalty of the Puerto Ricans; I sympathize with them in their misfortune, but their government can no more than any other government be administered without a revenue. There must be money for schools, for internal improvements, for general administration. We can get revenue only in one of three ways. By borrowing, by direct appropriations from the Federal Treasury, or by taxation. I do not believe that Congress would be justified in starting Puerto Rico on its new career mortgaged for the expenses of its current needs.

I do not believe, however strong may be the sympathy of the American people for the Puerto Ricans, that they will look with satisfaction upon direct appropriations of money out of the Federal Treasury for support of a people who do not themselves contribute thereto. Only one alternative, therefore, remains, namely, taxation. Indirect taxes are the least oppressive and easiest to be borne. They will fall on those who are best able to pay. It would be oppressive and burdensome beyond measure to extend our internal-revenue system to Puerto Rico, and yet if we are to treat Puerto Rico as we treat ourselves we must do that.

It must not be forgotten, Mr. Chairman, that we are conferring advantages upon these people far beyond what they have ever dreamed of. We have relieved them of the multiplied and oppressive Spanish taxes—export taxes, consumption taxes, transportation taxes, and others without number.

I find, for instance, from the report of Mr. Carroll, special commissioner from the Treasury Department to Puerto Rico, that in the year 1896 the producers of Puerto Rico paid export and cargo duties on sugar, molasses, coffee, and lumber to the amount of \$351,624.40. We relieve them from all burdens of that kind. Their coffee comes into our markets free, and that is two-thirds of their exports. On sugar we reduce the duty from \$30 per ton to

\$7.30 per ton. This will save them over \$1,000,000 annually. We reduce the duty on tobacco from 37 cents per pound to between 8 and 9 cents, and this will save another million annually.

In 1898 a committee of prominent citizens, appointed to report upon desired changes in the Puerto Rican tariff system, made a report to the Club de Industriales of Ponce recommending certain changes, but particularly two. One was greater protection to their own industries and the other was an attempt to secure from the North American Republic a reduction of 20 per cent in duties on tobacco, sugar, molasses, and salt exported from Puerto Rico.

This bill more than satisfies the desires then expressed. We give them protection and, instead of a 20 per cent reduction, we give them a 75 per cent reduction.

But above all, Mr. Chairman, we give them the benefit of all the money collected. What they pay out with one hand they receive again with the other.

The question of free trade or protection with respect to this little island is one of absolutely no importance; but when you come to say that under the limitations of the Constitution you must give free trade to the Philippines, you must incorporate into the body politic 12,000,000 Malays as citizens of the United States, and must extend to that archipelago our navigation laws, I call a halt. In behalf of my own people I am not willing to see the wage-earner of the United States, the farmer of the United States, put upon a level and brought into competition with the cheap half-slave labor, savage labor, of the Philippine Archipelago. [Loud applause.]

I want to say before I conclude, Mr. Chairman, that I am not impressed with the argument that all government is by the consent of the governed. That is a proposition that, however nicely it looks theoretically, we have never adopted in practice in this country. We did not adopt it in Louisiana; we did not adopt it in Florida. For more than thirty years we have ignored it and are ignoring it to-day in Alaska, and for five years the Territory of New Mexico existed under a code prescribed by a military governor, a code as to which the inhabitants of the Territory had nothing at all to say.

The rule does not apply to republican representative government. This Government itself does not exist by the consent of the governed. Twelve million five hundred thousand voters in the last Presidential election determined the policy of the Administration for 75,000,000 people; and during four years of bloody warfare the people of the South were governed and for years after against their consent. The question we have to meet is a practical question, Mr. Chairman; it is not a question of theory.

Liberty does not find its definition in glittering generalities. It is practical in its scope and purpose. It is not the same at all times and in all places. It means the largest individual freedom consistent with the welfare of all. It is therefore limited by conditions. What would be liberty in one place, among one people, would be license in another place among a different people. There is a necessary relation of suitability between the government and the governed.

The methods of government prescribed by the principles of Anglican liberty as practiced in the United States would be grotesque in the Philippine Islands and would bring to their people no advantage. They would be in point of fact impossible of execution.

I am sorry that my friend from Massachusetts [Mr. McCall] seems to think with our friends on the other side that the American people can not be trusted to do justice unless they are tied down by the terms of a written instrument. My friend from Massachusetts says:

But I regard it as a most inauspicious omen that our first legislative act should be framed on the theory that freedom does not follow the flag, but that the latter goes to those islands unattended by the great principles of liberty which have made it glorious. Who can measure the evils that will result from a denial of the fundamental muniments against oppression with which our Constitution surrounds the individual?

When and where will my friend tell me has the flag ever gone unattended by the great principles of liberty? Never anywhere. But it goes attended by those great principles not because they are written on any parchment, but because they are inscribed in the hearts of the American people. [Applause.]

The guaranties of liberty do not exist alone in the Constitution of the United States. They do not depend upon that great instrument for their strength and perpetuity. They would continue to live and flourish if that Constitution were annihilated. They are the indestructible heritage of humanity. They are our rich heritage, gained step by step through years of blood and struggle in a land of—

Just and old renown
Where freedom broadens slowly down
From precedent to precedent.

They existed before the Constitution was framed. They landed at Jamestown in 1607 and at Plymouth Rock in 1620. The principles of Magna Charta, the Petition of Right, and the Bill of Rights—the three statutes which Edmund Burke called the Bible of the English Constitution—and their accretions in the battles for liberty throughout all the centuries furnish the rule of political action wherever the Saxon race assumes to govern. No American Congress would dare to violate them in the face of the American people.

That people would brook no interference with the fundamental principles of liberty in the government of others any more than they would in the government of themselves. They will not unwrite their history. They will not dishonor their ancestry. Their flag shall be, as it has ever been, the flag of the free. And wherever it shall float, on land or sea, in sunshine or in storm, in the sky of the Occident or the sky of the Orient, every star shining from its field of blue and every stripe blazing from its field of white shall symbolize justice and the guaranty to every man of his full measure of liberty under law. [Loud and long-continued applause on the Republican side.]

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